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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 UNITED STATES OF AMERICA,) CASE NO. 13-0756-WHA
15 Plaintiff,) [PROPOSED] DETENTION ORDER
16 v.) 
17 WENDELL JOHNSON,)
18 Defendant.)
19)
20)

21 An Indictment filed in the Northern District of California charged Wendell JOHNSON with a
22 drug offense carrying a maximum sentence of at least ten years under the Controlled Substances Act.
23 For the reasons set forth below, the Court detains JOHNSON as both a risk of flight and a danger to the
24 community. See 18 U.S.C. § 3142.

25
26 **I. LEGAL STANDARDS**

27 Under the bail statute, 18 U.S.C. § 3142, a Court may order the release of a defendant unless
28 conditions of release will not reasonably assure the defendant's appearance or the safety of the

1 community or another person. The Court must order a defendant detained if, after a hearing pursuant to
2 the provisions of Section 3142(f), the Court finds that conditions cannot be fashioned to assure the
3 defendant's appearance in Court or the safety of the community or another person. See 18 U.S.C. §
4 3142(e). For a drug offense with a maximum prison sentence of at least ten years, "[s]ubject to rebuttal
5 by the person, it shall be presumed that no condition or combination of conditions will reasonably assure
6 the appearance of the person . . . and the safety of the community." 18 U.S.C. § 3142(e)(3). The
7 presumption shifts a burden of production to a defendant, but the burden of persuasion remains with the
8 government. See United States v. Hir, 517 F.3d 1081, 1086 (9th Cri. 2008).

9 Under Section 3142(f), the Court holds hearings only in certain cases, including on the
10 government's motion in drug cases involving a maximum sentence of at least ten years. At the hearing,
11 the Court determines whether any conditions in Section 3142(c) will reasonably assure the defendant's
12 appearance and the safety of the community or another person. The Court may hold the detention
13 hearing immediately at the defendant's first appearance, but the government may continue the hearing
14 for three days and the defense may continue it for five days. See 18 U.S.C. § 3142(f). Further
15 continuances are allowed only for good cause. See id. A defendant has certain rights at the hearing,
16 including the right to be represented by counsel and the opportunity to testify, present witnesses, and
17 present information by proffer or otherwise. See id. Section 3142(f) addresses other procedural issues
18 including the following: (1) the rules of evidence do not apply at a detention hearing and (2) a court
19 must have clear and convincing evidence to support a finding that conditions of release will not
20 reasonably assure the safety of the community or another person.

21 In evaluating whether conditions can be fashioned to assure the safety of the community or
22 another person, a Court considers the factors in Section 3142(g), including (1) the nature and
23 circumstances of the offense, including whether the offense is one of certain enumerated crimes
24 (including a controlled substance offense), (2) the weight of the evidence, (3) the history and
25 characteristics of the person (including his job, financial resources, family ties, community ties,
26 substance abuse history, physical and mental condition, character, criminal history, past conduct, track
27 record in appearing in court, and whether at the time of arrest the person was on supervision for parole,
28 probation, or other release in a pending criminal case), and (4) the nature and seriousness of the danger

1 to any person or the community posed by the person's release.

2 **II. PROCEDURAL FACTS**

3 The defendant initially appeared before the Honorable Jacqueline Scott Corley, U.S. Magistrate
4 Judge, on December 20, 2013, charged with the instant offense. By motion in open court on December
5 20, 2013, the government asked for the mandatory detention hearing under Section 3142(f) for drug
6 offenses carrying a maximum penalty of at least ten years, and asked for a continuance. With the
7 government and the defense counsel's agreement, the Court (a) set a detention to take place two Court
8 days later – on December 24, 2013 before the Honorable Nandor J. Vadas, (b) referred the matter to
9 Pretrial Services for a bail study, and (c) detained the defendant pending the hearing, as required by
10 Section 3142(f).

11 On December 24, 2013, Pretrial Services provided a report that included criminal history,
12 employment history, health information, and surety information. The criminal history showed multiple
13 previous convictions for drugs and firearms offenses dating back to 1989.

14
15 **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

16 Following a hearing under 18 U.S.C. § 3142(f), and considering the factors set forth in Section
17 3142(g), the Court finds that no condition or combination of conditions in Section 3142(c) will
18 reasonably assure the appearance of the defendant as required and the safety of any other person or the
19 community. In particular, the Court considered the following facts and 3142(g) factors.

20 **A. The Nature and Circumstances of the Offense**

21 JOHNSON is accused of dealing drugs in a school zone. The Court considered the government's
22 argument that the alleged offense occurred during school hours in broad daylight, as well as
23 JOHNSON's argument that the alleged offense involved a small amount of drugs.

24 **B. The Weight of the Evidence**

25 While the weight of the evidence is the least important factor, see e.g., United States v. Gebro,
26 948 F.2d 1118, 1121 (9th Cir. 1991), it is relevant to the Court's assessment of danger to the community
27 and risk of the defendant's non-appearance in Court. The government represented that the case against
28 JOHNSON involves a videotaped purchase of heroin that was also observed by law enforcement

1 officers.

2 C. The History and Characteristics of Phaouthoum

3 According to the pretrial services report, JOHNSON has sustained numerous previous
4 convictions for drugs and firearms-related offenses, dating back to 1989. Among the more troubling are
5 his 1992 federal convictions for manufacturing crack cocaine and being a felon in possession of a
6 firearm. JOHNSON was sentenced to 15 years in prison for those offenses, and served an additional 30
7 months after being released from custody when he violated the terms of his supervised release. These
8 facts indicate to the Court that no conditions can be fashioned that would allow JOHNSON to be
9 released pending trial in the instant case.

10 Additionally, JOHNSON currently has pending charges in state court for an alleged murder-for-
11 hire offense. JOHNSON is alleged to have committed the instant offense while on pretrial release from
12 those pending charges. These facts further indicate to the Court that there are no sufficient conditions
13 that could be fashioned in this case. These facts also demonstrate that JOHNSON poses a danger to the
14 community.

15 The Court is also concerned that JOHNSON was evasive about his living situation and
16 residential address when questioned by Pretrial Services. JOHNSON has also used at least one alias and
17 two social security numbers in the past. JOHNSON has also had multiple bench warrants issued for his
18 arrest in previous proceedings, although none have been issued in his most recent state court case,
19 described above. Taken together, these facts indicate to the Court that there are no conditions that exist
20 that would reasonably assure JOHNSON's appearance at future proceedings.

21 D. Conclusions of Law

22 The Court concludes that JOHNSON is both a risk of flight and a danger to the community. In
23 particular, the Court finds by clear and convincing evidence that no conditions will reasonably assure the
24 safety of the community or others, and by a preponderance that no conditions will reasonably assure the
25 defendant's appearance See 18 U.S.C. § 3142(f).

26
27 IV. DETENTION ORDER

28 Having found JOHNSON both a risk of flight and a danger to the community, the Court orders

1 JOHNSON detained pending trial. The defendant is committed to the custody of the Attorney General
2 or a designated representative for confinement in a corrections facility separate, to the extent practicable,
3 from persons awaiting or serving sentences or held in custody pending appeal. See 18 U.S.C. §
4 3142(i)(2). The defendant must be afforded a reasonable opportunity to consult privately with counsel.
5 See id. § 3142(i)(3). On order of a court of the United States or on request of an attorney for the
6 government, the person in charge of the corrections facility must deliver the defendant to the United
7 States Marshal for a court appearance. See id. § 3142(i)(4).

8 IT IS SO ORDERED.

9
10 DATED: 12/24/13



HON. NANDOR J. VADAS
United States Magistrate Judge